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THE WAVE STUDIO, LLC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

THE WAVE STUDIO, LLC, a New York
Limited Liability Company,

Plaintiff,

v.

UNITED AIRLINES, INC., Successor-In-
Interest to CONTINENTAL AIRLINES, INC.,
a Delaware Corporation, and DOES 1-100,

Defendants.

Case No.: 3:15-CV-00818

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT**

JURY TRIAL DEMANDED

The Wave Studio, LLC (“Plaintiff”), by its attorneys, Cobalt LLP, for its complaint against United Airlines, Inc., Successor-In-Interest to Continental Airlines, Inc. (“United”) and Does 1-100 (collectively “Defendants”) alleges as follows:

NATURE OF THIS ACTION

1. Plaintiff is the copyright owner of photographic works created by one of its members, Junior Lee. Ms. Lee is a Malaysian photographer who uses her pictures to create distinctive marketing and promotional materials for prominent hotels and renowned travel organizations worldwide. This is an action for copyright infringement arising out of Defendants’ unauthorized reproduction, display, distribution, publication, and utilization of several of Plaintiff’s photographs in

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1 connection with Defendants' promotion and sale of hotel and travel bookings on websites accessed
2 across the United States.

3 2. Ms. Lee is commissioned either by hotel management companies and promotional
4 agencies or by hotel and travel locations directly to photograph elite hotel properties and destination
5 locales and to create marketing and promotional materials featuring her photographs. However, per
6 the express terms of her contract with such agencies, Plaintiff retains sole and exclusive ownership of
7 all right, title, and interest in and to the underlying photos, as well as the sole and exclusive right to
8 license, distribute, and use the photographs for any and all other purposes.

9 3. As set forth in more detail below, Defendants have committed blatant acts of
10 copyright infringement by improperly using Plaintiff's photographs without authorization for their
11 own financial gain, including but not limited to, using Plaintiff's photographs in articles, photo
12 galleries, and promotional materials, all of which are generating traffic to and revenue for Defendants
13 and their businesses. By virtue of this action, Plaintiff should be awarded the appropriate injunctive
14 relief and monetary damages to remedy and redress Defendants' rampant, willful, and continued
15 misuse of Plaintiff's copyrighted photographs.

16 **JURISDICTION AND VENUE**

17 4. This Complaint alleges causes of action under the copyright laws of the United States,
18 Title 17 of the United States Code.

19 5. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§
20 1331 and 1338 because Plaintiff's claims against Defendants arise under Title 17 of the United States
21 Code.

22 6. This Court has personal jurisdiction over United because United has done and
23 continues to do business in this District, including but not limited to entering into contracts with
24 entities in this District and offering its services throughout this District.

25 7. Pursuant to 28 U.S.C. § 1391 and 1400(a), venue properly lies in this Court because a
26 substantial part of the events giving rise to the claims alleged in this Complaint occurred in this
27 judicial District and because Defendants reside or are found within this District.

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INTRADISTRICT ASSIGNMENT

8. Pursuant to Civil L.R. 3-2(c) and General Order No. 44, this case is properly assigned to any division of this Court, except that pursuant to Civil Local Rules 3-2(g) and 73-1, Plaintiff does not consent to assignment to a Magistrate Judge residing in the Eureka Division.

THE PARTIES

9. Plaintiff, The Wave Studio, LLC, is a limited liability company organized under the laws of the State of New York, with its principal place of business at One Barker Avenue, #542, White Plains, New York 10601. Plaintiff is a business entity operated by photographer Junior Lee, a Malaysian citizen currently domiciled in Singapore. Ms. Lee creates marketing materials for businesses worldwide using her original works, but retains ownership of all rights, title, and interest in and to all artistic works used therein. The Wave Studio, LLC was formed to hold, manage, and control the U.S. intellectual property rights to said works, including, but not limited to, several U.S. copyright registrations.

10. Upon information and belief, Defendant United is a Delaware corporation with its principal place of business at 233 South Wacker Drive, Chicago, Illinois, 60606. Upon information and belief, Defendant United, itself or through affiliated entities, including but not limited to its predecessor-in-interest Continental Airlines, Inc., owns and uses, and/or has owned and used, at least the domain name <hotels.continental.com>. Upon information and belief, during all relevant time periods, Defendant United and its predecessor-in-interest Continental Airlines, Inc., regularly transacted or solicited business in this district through, *inter alia*, a website resolving to <hotels.continental.com>.

11. The true names and capacities, whether individual, corporate, or otherwise, of Defendants Does 1 through 100 are presently unknown to Plaintiff, who, therefore, sues them by such fictitious names. Plaintiff expects, but is presently without information sufficient to confirm, that one or more of Defendants distributed Plaintiff's photographs to third parties without Plaintiff's authorization and/or otherwise infringed upon Plaintiff's copyright rights to the works of art at issue in this case, infringing those copyright rights. At such time as Plaintiff ascertains the identity and nature of any such third parties, Plaintiff will seek leave of Court to amend this Complaint

1 accordingly. On information and belief, Plaintiff alleges that each of Does 1 through 100 was the
 2 agent, representative, or employee of each of the other Defendants and was acting at all times within
 3 the scope of his, her, or its agency or representative capacity, and that each of Does 1 through 100 are
 4 liable to Plaintiff in connection with the claims sued upon here and are responsible in some manner
 5 for the wrongful acts and conduct alleged here.

6 **FACTUAL BACKGROUND**

7 12. Over her more than 20 year career, Junior Lee has established a widely successful
 8 business in travel and hotel photography worldwide. She has photographed numerous storied
 9 properties, including The Setai Miami (USA), The Heritage House Mendocino (USA), The Chedi
 10 Milan (Italy), The Leela Goa (India), The Chedi Muscat (Oman), The Nam Hai Hoi An (Vietnam),
 11 The Chedi Chiang Mai (Thailand), The Chedi Phuket (Thailand), The Datai Langkawi (Malaysia),
 12 The Andaman Langkawi (Malaysia), The Saujana Kuala Lumpur (Malaysia), The Club at The
 13 Saujana Kuala Lumpur (Malaysia), Carcosa Seri Negara Kuala Lumpur (Malaysia), The Legian
 14 Seminyak (Bali), The Club at The Legian Seminyak (Bali), The Chedi Club Ubud (Bali), The Serai
 15 Club Jimbaran (Bali), The Lalu Sun Moon Lake (Taiwan), Langsuan Apartment Bangkok (Thailand),
 16 Seah St. Apartment (Singapore), GHM Boutique Products (Singapore), The Fullerton Hotel
 17 (Singapore), La Pari-Pari Hotel Langkawi (Malaysia), and Four Seasons Great Exuma (Bahamas).
 18 Her photographs are highly sought after works of art that businesses worldwide routinely display in
 19 the course of promoting their facilities, custom, and trade. Her photographs of The Setai Miami, The
 20 Chedi Muscat, The Nam Hai Hoi An, The Chedi Club Ubud, The Chedi Chiang Mai, The Leela Goa,
 21 The Carcosa Seri Negara Kuala Lumpur, The Club at The Legian Seminyak, The Andaman
 22 Langkawi, The Lalu Sun Moon Lake, The Saujana Kuala Lumpur, and The Datai Langkawi (the
 23 “Hotel Photographs”) are at issue in this matter.

24 13. Ms. Lee’s photography business is promotional in nature. Generally, Ms. Lee is
 25 commissioned by her clientele to photograph certain items, personnel, sites, or facilities, modify the
 26 images as necessary, and deliver the final product to her clientele for approval. Ms. Lee is usually
 27 compensated via the client’s purchase of marketing materials that incorporate her photographs. In
 28 other words, the client purchases the marketing materials designed and manufactured by Ms. Lee,

1 inclusive of a limited license to distribute the marketing materials created by Ms. Lee. The client does
2 not purchase the underlying photographs.

3 14. Ms. Lee specifically reserves all rights to her works that are not otherwise purchased
4 by her clientele. One of the rights she reserves is the ownership of the photographs, including the
5 copyright in and to the same.

6 15. Ms. Lee, through various business entities (including, but not limited to, Wave-s, The
7 Wave Pte. Ltd. and The Wave Design Pte. Ltd.), obtained copyright registrations from the United
8 States Copyright Office for the Hotel Photographs (collectively and individually, “Copyrighted
9 Works”). True and correct copies of registration certificates for the Copyrighted Works are attached
10 hereto as **Exhibit 1**. These copyright registrations are identified in the following chart:

11	Registration Number	Title of Work
12	VA 1-432-324	Wave-s Photographs 2001
13	VA 1-432-325	Wave-S photographs 2002
14	VA 1-432-326	The Wave Design Pte. Ltd. Photographs 2007 (A)
15	VA 1-432-327	The Wave Design Pte. Ltd. Photographs 2007 (B)
16	VA 1-432-328	Wave-s Photographs 2003
17	VA 1-432-329	Wave-s Photographs 2004
18	VA 1-432-330	The Wave Design Pte. Ltd. Photographs 2006
19	VA 1-432-331	The Wave Pte. Ltd. Photographs 2005 (A)
20	VA 1-432-332	The Wave Design Pte, Ltd. Photographs 2005 (B)
21	VA 1-432-336	Wave-s Photographs 2002 (B)
22	VA 1-433-816	Wave-s Photographs 2002 (C)
23	VA 1-758-524	Wave-s Photographs 2004 (B)
24	VA 1-765-854	The Wave Design Pte. Ltd. published legian 121
25	VA 1-824-376	The Wave Design Pte. Ltd. – datai105
26	VA 1-825-249	The Wave Design Pte. Ltd. – detai104
27		
28		

Registration Number	Title of Work
VA 1-825-264	The Wave Design Pte Ltd. - andaman067
VA 1-825-429	Wave-s Photographs 2004 (D)-chediclub141
VA 1-825-431	Wave-s Photographs 2004 (C) – legian122
VA 1-829-021	The Wave Design Pte. Ltd. – andaman068
VA 1-842-228	The Wave Design Pte. Ltd. – bkk018 – bkk025
VA 1-842-230	Wave-s Photographs 2004 – Chiangmai239
VA 1-857-706	Wave-S Photographs 2002 – lalu159
VAu 1-055-458	The Wave Design Pte. Ltd. Unpublished photographs 2005 (C) setai429 – setai803
VAu 1-055-459	The Wave Design Pte. Ltd. Unpublished photographs 2005 (D) setai804 – setai958; setai960 – setai179
VAu 1-057-927	The Wave Pte. Ltd. unpublished setai182
VAu 1-060-180	The Wave Design Pte. Ltd. unpublished setai0183; 0184
VAu 1-060-182	Wave-s unpublished setai959
VAu 1-110-867	The Wave Design Pte. Ltd. – Unpublished Photograph setai1180
VAu 1-144-751	The Wave Design Pte. Ltd. – Unpublished setai1181

16. On November 11, 2011, the authors of the Copyrighted Works, by and through Ms. Lee, assigned all right, title and interest in and to the Copyrighted Works to Plaintiff.

17. Plaintiff has never assigned, licensed, or otherwise transferred any interest in and to the Copyrighted Works to Defendants or otherwise dedicated them to the public.

18. Defendants did not seek, nor have they ever sought, Plaintiff or Junior Lee's permission to utilize the Hotel Photographs.

19. Despite having no permission, consent, or license to do so from Plaintiff, Defendants have used and continue to use the Hotel Photographs in violation of Plaintiff's exclusive rights as a copyright owner, and have not compensated Plaintiff for such use.

20. Upon information and belief, the Hotel Photographs that are the subject of the Copyrighted Works have been seen and continue to be seen by thousands of users in the United States and worldwide on a daily basis.

21. Upon information and belief, Defendants have utilized the Hotel Photographs for purposes of trade, including promoting and advertising the bookings to the boutique and high-end hotels featured in those Copyrighted Works, thus realizing significant revenue, all without Plaintiff's authorization.

FIRST CLAIM FOR RELIEF

Copyright Infringement

(17 U.S.C. § 101 *et seq.*)

22. Plaintiff repeats and realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 21 above.

23. Defendants have directly infringed Plaintiff's Hotel Photographs that are the subject of the Copyrighted Works by reproducing, displaying, and/or distributing unauthorized copies of Plaintiff's photographs in violation of 17 U.S.C. § 501 *et seq.*

24. Defendants copied Plaintiff's entire images for their own personal commercial gain. Moreover, Defendants' use of the Hotel Photographs is for the exact same purpose as Plaintiff's intended use: to promote and market hotel properties and destination locations. Thus, there is no added benefit to the public from having Defendants display Plaintiff's Hotel Photographs.

25. Specifically, without authorization or consent, Defendants have reproduced, displayed, and/or distributed at least Plaintiff's Copyrighted Works of Registration Nos. VA 1-432-324, VA 1-432-325, VA 1-432-326, VA 1-432-327, VA 1-432-328, VA 1-432-329, VA 1-432-330, VA 1-432-331, VA 1-432-332, VA 1-432-336, VA 1-433-816, VA 1-758-524, VA 1-765-854, VA 1-824-376, VA 1-825-249, VA 1-825-264, VA 1-825-429, VA 1-825-431, VA 1-829-021, VA 1-842-228, VA 1-842-230, VA 1-857-706, VAu 1-055-458, VAu 1-055-459, VAu 1-057-927, VAu 1-060-180, VAu 1-060-182, VAu 1-110-867, and VAu 1-144-751. True and correct copies of Defendants' websites demonstrating their unauthorized use of Plaintiff's Copyrighted Works are attached as **Exhibit 2**.

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COBALT LLP

By: /s/ Vijay K. Toke
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Attorneys for Plaintiff
THE WAVE STUDIO, LLC

JURY DEMAND

The Wave Studio, LLC respectfully requests a jury trial on all issues triable thereby.

COBALT LLP

By: /s/ Vijay K. Toke
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THE WAVE STUDIO, LLC